IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Appeal Lodging No. 298 of 2005
in
Arb Petition No.29l of 2003

Abhipra Capital Limited . Appellants
vs
Econ Antri Limited ... Respondents

Mr.Vicky Singh i/b T Madgaonkar & Co for appellants
Mr. Sameer Vaidya for respondents

CORAM: A.P.SHAH & S.J.VAZIFDAR JJ.

Dated l5.4.2005

P.C:

l. Heard the learned counsel appearing for the parties. Perused record including the award of the Arbitrator. The only contention raised by the appellants is that the arbitration proceedings initiated by the respondents were time barred. Chapter XI of the byelaws of the National Stock Exchange deals with the "arbitration" and byelaw 3 prescribes the period of limitation for reference of claims,differences or disputes for arbitration. Byelaw 3 inter alia reads as follows:

> "All claims, differences or disputes referred to in Byelaw (l), (lA) and (lB) shall be submitted to arbitration within six

months from the date on which the claim difference, or dispute arose or shall be deemed to have arisen. The time taken in conciliation proceedings, if any, initiated and conducted as per the provisions of the Act and the time taken by the Relevant Authority to administratively resolve the claims, differences or disputes shall be excluded for the purpose of determining the period of six months".

(emphasis supplied)

2. In para 8 of the award the arbitrator observed as under:

"The respondent has placed heavy reliance on the provisions which relate to conciliation proceedings and contended that there was no conciliation in this dispute. But the respondent has not taken into account one more aspect which refers to the time taken by Relevant Authority to administratively resolve claim or dispute to be excluded for the purpose of determining the period of six months. The two transactions are of September/ October 2000 in respect of which discussions were going on between the

parties The delivery of shares was not made nor any credit given by the respondent to the applicant for a long time hence the matter was taken up with NSE and that could be found in the letter dated February 6, 2002 from the applicant to the NSE New Delhi. The matter remained under negotiations till April 9,2002 when the NSE New Delhi informed the applicant that the dispute remained unresolved administratively till April 9,2002, and it may file application for arbitration if so desired. The perusal of the letter dated July 27,200l, from the respondent to the applicant would show that the respondent had made a demand draft of Rs.52,l80 in favour of the applicant by showing adjustments towards some trading and securities accounts.There was also a cheque of Rs.l lakh given by the respondent to the applicant earlier which was demanded back. The applicant did not accept the demand draft. The different accounts shown by the respondent wherein debits and credits shown vide letter dated July 27,200l were not acceptable to the applicant. The respondent contended that correct limitation for IIS

shares shall commence from September 29,2000 and for SSI from November l0,2000 and therefore according to the respondent the arbitration application filed on August 23,2002 was barred by limitations. It has been already pointed out above as to how the matter remained with the grievance cell at New Delhi and when the applicant found that the respondent was using delay tactics and when the NSE also expressed that if so desired the applicant may file arbitration application, the applicant filed it on August 23,2002. Now the question would be whether the claim of the applicant remained suspended till April 9,2002 since the dispute remained unresolved till then. The analysis and security of all the dates in respect of these two transactions and also the tendering of DD for Rs.52,l80 in full settlement by the respondent in addition to the fact of criminal prosecution u/s l38 of the Negotiable Instruments Act launched by the applicant against the respondent for bouncing of the cheque of Rs.l lac, it must be said that the claim shall be deemed to have arisen on failure of the grievance of the applicant in April 2002. In other words

the claim of the applicant must be deemed to have arisen in April 2002,. It cannot be said that a claim, a reference, and a dispute have the same meaning. In the present case it is relevant to consider that the claim of the applicant of Rs.4,l2,460.75 which arose in April 2002, remained unresolved till April 9,2002 which would mean that the claim shall be deemed to have arisen from that date i.e. April 9,2002. In these circumstances therefore, the claim filed on August 23,2002 would be within the period of limitation".

. The finding of fact on the issue of limitation is based on appreciation of evidence on record which is a plausible view . Considering extremely limited jurisdiction of this court under section 34 it is not possible to interfere with the award of the arbitrator.

Appeal is accordingly dismissed.